

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA
:
-v.-
:
ALBERTO WILLIAM VILAR,
a/k/a "Albert Vilar," and
:
GARY ALAN TANAKA,
:
Defendants. :
:
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Order

S3 05 Cr. 621 (RJS)

WHEREAS, on August 15, 2006, ALBERTO WILLIAM VILAR ("Vilar") and GARY ALAN TANAKA ("Tanaka") (collectively referred to as "the defendants"), were charged in a twelve-count Superseding Indictment, S3 05 Cr. 621 (KMK) (the "Indictment"), with engaging in a conspiracy to commit securities fraud, investment adviser fraud, mail fraud, wire fraud, and money laundering, in violation of Title 18, United States Code Section 371 (Count One); securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5 and Title 18, United States Code, Section 2 (Counts Two and Three); investment adviser fraud, in violation of Title 15, United States Code, Sections 80b-6 and 80b-17 and Title 18, United States Code, Section 2 (Count Four); mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2 (Count Five); wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Counts Six and Seven); and money laundering, in violation of Title 18, United States Code, Sections 1957 and 2 (Counts Eight through Eleven); and making false statements in violation of Title 18, United States Code, Sections 1001(a) and 2 (Count Twelve);

WHEREAS, the Indictment contained a forfeiture allegation seeking, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, the forfeiture of any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, including but not limited to at least \$19,706,363.74 in United States Currency, representing proceeds obtained as a result of the charged securities, mail and wire fraud offenses charged in the Indictment for which the Defendants are jointly and severally liable (the "Fraud Judgment"); and seeking, pursuant to Title 18, United States Code, Section 982, the forfeiture of any and all property, real and personal, involved in the charged money laundering offenses, including all property traceable to such property, including but not limited to at least \$5,000,000 in United States currency (the "Money Laundering Judgment");

WHEREAS, the forfeiture allegation also included a substitute asset provision, pursuant to Title 21, United States Code, Section 853(p), whereby the United States asserted its intent to forfeit any other property of the defendants up to the value of the Fraud Judgment and/or Money Laundering Judgment including but not limited to the following:

- (1) Any and all right, title and interest in the following companies:
 - (a) Techno Raquia, S.A.;
 - (b) Amerindo Management Inc.;
 - (c) Amerindo Technology Growth Fund Inc.;
 - (d) Amerindo Technology Growth Fund II, Inc.;
 - (e) Olafson, Inc.;
 - (f) The Trustees of the Amerindo Advisors (UK) Ltd. Ret. Benefits Scheme;
 - (g) Amerindo Master Venture Fund LLC;

- (h) Amerindo Investment Advisors Inc. Money Purchase Plan and Trust; and
 - (i) Amerindo Internet Growth Fund Ltd;
- (2) Any and all right, title and interest in Bear Stearns & Co., Inc. brokerage account numbers:
- (a) 102-17995, held in the name of Techno Raquia, S.A.;
 - (b) 102-01485, held in the name of Amerindo Management Inc., sub-Account M26;
 - (c) 102-01490, held in the name of Amerindo Technology Growth Fund Inc.;
 - (d) 102-01495, held in the name of Amerindo Technology Growth Fund II, Inc.;
 - (e) 102-15833, held in the name of Olafson, Inc.;
 - (f) 102-05012, held in the name of The Trustees of the Amerindo Advisors (UK) Ltd. Ret. Benefits Scheme;
 - (g) 102-25590, held in the name of Amerindo Master Venture Fund LLC;
 - (h) 102-25612, held in the name of Amerindo Investment Advisors Inc. Money Purchase Plan and Trust; and
 - (i) 102-27950, held in the name of Amerindo Internet Growth Fund Ltd.;
- (3) Any and all right, title and interest in one or more apartment units located at 860 United Nations Plaza, New York, New York;
- (4) Any and all right, title and interest in 7 High Coombe Place, Warren County, Kingston Upon Thames, Surrey, England;

WHEREAS, on November 19, 2008, a jury returned a guilty verdict against Vilar on all twelve counts in the Indictment and Tanaka was found guilty of Counts One, Three, and

Four of the Indictment (conspiracy, securities fraud and investment adviser fraud) and was acquitted on the remaining Counts, including the money laundering counts;

WHEREAS, on October 26, 2009, the Court entered a Post-Conviction Restraining Order, restraining the following:

- a. Any and all assets of the following companies:
 - i. Amerindo Investment Advisors, Inc.;
 - ii. Amerindo Investment Advisors, Inc.;
 - iii. Amerindo Investment Advisors (UK) Ltd.;
 - iv. Techno Raquia, S.A.;
 - v. Amerindo Management Inc.;
 - vi. Amerindo Technology Growth Fund Inc.;
 - vii. Amerindo Technology Growth Fund II, Inc.;
 - viii. Olafson, Inc.;
 - ix. Amerindo Master Venture Fund LLC;
- b. J.P. Morgan Chase (f/k/a Bear Stearns & Co., Inc.) brokerage account numbers:
 - i. 102-17995, held in the name of Techno Raquia, S.A.;
 - ii. 102-01485, held in the name of Amerindo Management Inc., sub-Account M26;
 - iii. 102-01490, held in the name of Amerindo Technology Growth Fund Inc.;
 - iv. 102-01495, held in the name of Amerindo Technology Growth Fund II, Inc.;
 - v. 102-15833, held in the name of Olafson, Inc.;
 - vi. 102-05012, held in the name of the The Trustees of the Amerindo Advisors (UK) Ltd. Ret. Benefits Scheme;

- vii. 102-55590, held in the name of Amerindo Master Venture Fund LLC;
- viii. 102-25612, held in the name of Amerindo Investment Advisors Inc. Money Purchase Plan and Trust; and
- ix. 102-27950 held in the name of Amerindo Internet Growth Fund Ltd.;
- c. All right, title, and interest of the defendants in the following:
 - i. The Trustees of the Amerindo Advisors (UK) Ltd. Ret. Benefits Scheme;
 - ii. Amerindo Investment Advisors Inc. Money Purchase Plan and Trust;
- d. Approximately \$273,611.89 in funds formerly held by @Ventures Management, LLC for the benefit of Amerindo Technology Growth Fund II, Inc.;
- e. Approximately \$1.6 million in funds on deposit at U.S. Bank for the benefit of Amerindo Technology Growth Fund II, Inc.;
- f. Any and all right, title and interest of Vilar in one or more apartment units located at 860 United Nations Plaza, New York, New York;
- g. Any and all right, title and interest of Tanka in 7 High Coombe Place, Warren County, Kingston Upon Thames, Surrey, England; and
- h. Any and all right, title, and interest of Tanaka in approximately 32 race horses, including but not limited to, the horses known as Billy Allen, Debicki, Honimiere, King's Drama, Passager, Philatelist, Pressing, Simonas, Touch of Land, Shaker, Sudan, Gentlewave, Rakti, Epalo, Millkom, Donna Viola, Golden Apples, Gourmet Girl, Lovellon, Passinetti, Pico Central, Snow Polina, Squeak, Sarafan, Polaire, Star Parade, Queen Maud, Fruhlingssturm, Distant Valley, Agata, Riddlesdown, and Don Incuato;

WHEREAS, on February 5, 2010 defendants Vilar and Tanaka were sentenced and ordered to forfeit an amount of United States currency to be determined by the Court;

WHEREAS, on April 7, 2010 Orders of Forfeiture were entered by the Court ordering each Defendant to forfeit their individual interest in \$54,351,159 United States currency;

WHEREAS, on November 9, 2010, an Order of Forfeiture of Substitute Assets was entered by the Court against defendants Vilar and Tanaka ordering that all of the Defendants' right, title, and interest in the following:

- (A) Any and all right, title and interest in the following companies:
 - (i) Amerindo Investment Advisors Inc.;
 - (ii) Amerindo Investment Advisors II, Inc.;
 - (iii) Amerindo Investment Advisors (UK) Ltd.;
 - (iv) Techno Raquia, S.A.;
 - (v) Amerindo Management Inc.;
 - (vi) Amerindo Technology Growth Fund Inc.;
 - (vii) Amerindo Technology Growth Fund II, Inc.;
 - (viii) Olafson, Inc.;
 - (ix) The Trustees of the Amerindo Advisors (UK) Ltd. et. Benefits Scheme;
 - (x) Amerindo Master Venture Fund LLC; and
 - (xi) Amerindo Investment Advisors Inc. Money Purchase Plan and Trust;
- (B) Any and all right, title and interest in Bear Stearns & Co., Inc. brokerage account numbers:
 - (i) 102-17995, held in the name of Techno Raquia, S.A.;
 - (ii) 102-01485, held in the name of Amerindo Management Inc., sub-Account M26;
 - (iii) 102-01490, held in the name of Amerindo Technology Growth Fund Inc.;
 - (iv) 102-01495, held in the name of Amerindo Technology Growth Fund II, Inc.;

- (v) 102-15833, held in the name of Olafson, Inc.;
- (vi) 102-05012, held in the name of The Trustees of the Amerindo Advisors (UK) Ltd. Ret. Benefits Scheme;
- (vii) 102-25590, held in the name of Amerindo Master Venture Fund LLC; and
- (viii) 102-25612, held in the name of Amerindo Investment Advisors Inc. Money Purchase Plan and Trust;
- (C) SG Americas Securities, LLC account number 64524357, held in the name of Amerindo Technologies Growth Fund;
- (D) Approximately \$273,611.89 in funds formerly held by @Ventures Management, LLC for the benefit of Amerindo Technology Growth Fund II, Inc.;
- (E) Approximately \$1.6 million in funds on deposit at U.S. Bank for the benefit of Amerindo Technology Growth Fund II, Inc.;
- (F) Any and all right, title and interest in one or more apartment units located at 860 United Nations Plaza, New York, New York;
- (G) Any and all right, title and interest in 7 High Coombe Place, Warren County, Kingston Upon Thames, Surrey, England; and
- (H) Any and all right, title, and interest of Tanaka in approximately 32 race horses, including but not limited to, the horses known as Billy Allen, Debicki, Honimiere, King's Drama, Passager, Philatelist, Pressing, Simonas, Touch of Land, Shaker, Sudan, Gentlewave, Rakti, Epalo, Millkom, Donna Viola, Golden Apples, Gourmet Girl, Lovellon, Passinetti, Pico Central, Snow Polina, Squeak, Sarafan, Polaire, Star Parade, Queen Maud, Fruhlingssturm, Distant Valley, Agata, Riddlesdown, and Don Incuato.

be forfeited to the United States for disposition in accordance with law and applied towards the Money Judgments entered against the Defendants (the "Substitute Assets Order");

WHEREAS, the defendants have challenged on appeal the entry of the Order of Forfeiture and Substitute Assets Order (the "Appeal");

WHEREAS, due to the fact that the Appeal is still pending and a Final Order of Forfeiture with respect to the Substitute Assets Order has not been entered, the assets contained within the Substitute Assets Order have not been finally forfeited to the United States;

WHEREAS, the Court has appointed a Receiver in the related Securities and Exchange Commission action, *Securities and Exchange Commission v. Amerindo Investment Advisors, Inc., et al.*, 05 Civ. 5231 (RJS) to investigate and determine the value of investor assets that have been seized or frozen pursuant to the Forfeiture Order in the criminal case, to consider what actions can and should be taken to avoid dissipation of those assets, and to submit a report to the Court regarding his findings and recommendations;

WHEREAS, the Receiver is to be compensated from the Amerindo Investor accounts restrained in the criminal case;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Ian Gazes, the court appointed Receiver in the Securities and Exchange Commission action, *Securities and Exchange Commission v. Amerindo Investment Advisors, Inc., et al.*, 05 Civ. 5231 (RJS) (the "S.E.C. Action"), is to be compensated from funds in the Amerindo Investor accounts restrained in the criminal case.

2. Mr. Gazes compensation shall not exceed \$50,000 in United States currency.

3. Upon entry of this Order, the Restraining Order shall be modified so as to permit \$50,000 in United States currency to be withdrawn from the following account and forwarded to a Court Registry Investment System ("CRIS") account to be set up in the S.E.C.


Action:

Bear Stearns & Co., Inc. Account Number 102-01495, held in the name of Amerindo Technology Growth Fund II, Inc. (the "Bear Stearns Account").

4. Any funds remaining after Mr. Gazes is compensated shall be re-deposited into the Bear Stearns Account.

Dated: New York, New York
March 11, 2013

SO ORDERED:



HONORABLE RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE